

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHRISTOPHER M. COLL,

Plaintiff,

v.

WORCESTER HOUSE OF CORRECTIONS,

et al.,

Defendants.

Civil Action No. 19-12592-LTS

ORDER

January 21, 2020

SOROKIN, D.J.

Pro se plaintiff Christopher M. Coll has filed a civil action and motions for leave to proceed in forma pauperis and for the appointment of counsel. Coll claims that on October 2, 2019, while he was confined at the Worcester County House of Correction, three correctional officers used excessive force against him. He represents that he was transferred to the Middlesex County House of Correction, where he is currently confined, shortly after filing a grievance about the alleged attack. Coll brings this action against the “Worcester House of Corrections,” Correctional Officer Michael Ryan, Correctional Officer, and a “John Doe” correctional officer.

Upon consideration of Coll’s motions and review his complaint pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A,¹ the Court hereby orders:

¹ These statutes permit the Court to conduct its own review of a complaint filed by a person proceeding in forma pauperis and by a prisoner plaintiff. The Court may dismiss the complaint or any part thereof that fails to state a claim upon which relief may be granted, is malicious, is frivolous, or seeks damages against a party immune from such relief. See 28 U.S.C. §§ 1915(e)(2), 1915A(b).

1. The motion for leave to proceed in forma pauperis is GRANTED. An initial partial filing fee is not assessed. The entire \$350 filing fee will be collected over time in accordance with 28 U.S.C. 1915(b)(2). The Clerk shall provide a copy of this Order to the treasurer of the institution having custody of Coll.

2. The Worcester House of Corrections shall be dismissed as a party to this action. The House of Corrections is only a building; it is not a suable entity.

3. The Clerk shall issue summonses for Officers Ryan and Hill. Coll is responsible for ensuring that (a) these defendants are served with a summons, the complaint, and this order; and (b) said service is executed in accordance with Rule 4 of the Federal Rules of Civil Procedure.

4. The aforesaid service must be completed within 90 days of the issuance of the summonses. Failure to complete service in a timely fashion may result in dismissal of the action without prior notice to the plaintiff. See Fed. R. Civ. P. 4(m); Local Rule 4.1 (D. Mass.).

5. Because Coll is proceeding in forma pauperis, he may elect to have the United States Marshals Service (“USMS”) complete service with all costs of service to be advanced by the United States. If so asked by the plaintiff, the USMS shall serve the summonses, complaint, and this order on the defendants as directed by the plaintiff. Coll is responsible for providing the USMS all copies for service and for completing a USM-285 form for each party to be served. The Clerk shall provide Coll with forms and instructions for service by the USMS.

6. At this time, a summons will not issue for Correctional Officer “John Doe” because this is a fictitious name. Although the use of fictitious names to identify defendants is not favored, situations may arise where the identity of an alleged defendant cannot be known prior to the filing of a complaint. See Martínez-Rivera v. Ramos, 498 F.3d 3, 8 (1st Cir. 2007).

If, through discovery or otherwise, Coll discovers the true name of Correctional Officer “John Doe,” he “should act promptly to amend the complaint to substitute the correct parties and to dismiss any baseless claims.” Id. at 8 n.5. He may then also file a motion for issuance of a summons for this defendant. If a summons issues, the United States Marshal shall complete service as directed by plaintiff with all costs of service to be advanced by the United States.

7. The motion for appointment of counsel is DENIED without prejudice to renewal after Officers Ryan and Hill have been served with and responded to the complaint.

SO ORDERED.

/s/ Leo T. Sorokin
UNITED STATES DISTRICT JUDGE